

NOS. A11-202 and A11-496

---

State of Minnesota  
 In Court of Appeals

---

In re the Marriage of:  
 Andrew Jay Redleaf, petitioner,

*Appellant,*

vs.

Elizabeth Grace Redleaf,

*Respondent.*

---

**APPELLANT'S REPLY BRIEF**

---

Nancy Zalusky Berg (#7171)  
 Allison Maxim (#353784)  
 WALLING, BERG & DEBELE, PA  
 121 South Eighth Street, Suite 1100  
 Minneapolis, MN 55402  
 (612) 340-1150

Alan C. Eidsness (#26189)  
 Suzanne M. Remington (#244752)  
 Jaime Driggs (#338606)  
 HENSON & EFRON, PA  
 220 South Sixth Street, Suite 1800  
 Minneapolis, MN 55402  
 (612) 339-2500

Mark Briol (#126731)  
 Morgan Smock (#327463)  
 BRIOL & ASSOCIATES, PLLC  
 3700 IDS Center  
 80 South Eighth Street  
 Minneapolis, MN 55402  
 (612) 337-8410

*Attorneys for Appellant*

*Attorneys for Respondent*

## TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
ARGUMENT.....	1
<u>I. THE DISCRETION VESTED IN DISTRICT COURTS TO SELECT AN EQUITABLE INTEREST RATE APPLIES IN ALL CASES "WHERE INTEREST IS DUE" AND SUCH AUTHORITY TO DO EQUITY DOES NOT TERMINATE UPON ENTRY OF JUDGMENT AS SUGGESTED BY RESPONDENT.....</u>	1
<u>II. THE POST-JUDGMENT INTEREST CASES CITED BY RESPONDENT ARE NOT DISPOSITIVE OF THIS APPEAL BECAUSE THEY DO NOT ADDRESS WHETHER THE DISTRICT COURT HAS DISCRETION TO SET AN EQUITABLE INTEREST RATE.....</u>	7
<u>III. THE POST-JUDGMENT INTEREST STATUTE AND ITS HISTORY IS NOT DISPOSITIVE OF THIS APPEAL.....</u>	10
CONCLUSION.....	13

## TABLE OF AUTHORITIES

### Cases

<i>Bickle v. Bickle</i> , 265 N.W. 276, 277 (Minn. 1936).....	7, 8, 9, 11
<i>DeLa Rosa v. DeLa Rosa</i> , 309 N.W.2d 755, 758 (Minn. 1981).....	3, 4, 6
<i>Fernandez v. Fernandez</i> , 373 N.W.2d 636 (Minn. Ct. App. 1985).....	7, 8, 9
<i>Haefele v. Haefele</i> , No. C9-02-1818, 2003 WL 21524868 (Minn. Ct. App. July 8, 2003).....	9
<i>Holmberg v. Holmberg</i> , 588 N.W.2d 720, 724 (Minn. 1999).....	3
<i>In re Defenses and Objections to Personal Property Taxes for 1969 Assessment</i> , 226 N.W.2d 296, 299 (Minn. 1975).....	12
<i>Johnson v. Johnson</i> , 84 N.W.2d 249 (Minn. 1957).....	1, 2, 3, 6, 7, 8, 9, 10, 13
<i>Johnston v. Johnston</i> , 158 N.W. 2d 249, 254 (Minn. 1968).....	3, 4
<i>Karypis v. Karypis</i> , 458 N.W.2d 129, 131 (Minn. Ct. App. 1990), <i>rev. denied</i> (Minn. Sept. 14, 1990).....	5, 6
<i>LaFreniere-Nietz v. Nietz</i> , 547 N.W.2d 895 (Minn. Ct. App. 1996).....	5, 6
<i>Lienhard v. State</i> , 431 N.W.2d 861, 865 (Minn. 1988).....	11
<i>McCormack v. Hanksraft Co., Inc.</i> , 161 N.W.2d 523, 524 (Minn. 1968).....	11, 12
<i>Merickel v. Merickel</i> , 401 N.W.2d 90 (Minn. Ct. App. 1987).....	7, 8, 9
<i>Nardini v. Nardini</i> , 414 N.W.2d. 184, 188 (Minn. 1987).....	3
<i>Nelson v. Nelson</i> , 400 N.W.2d 763, 765 (Minn. Ct. App. 1987), <i>rev. denied</i> (Minn. Apr. 23, 1987).....	3, 4, 6
<i>Olson v. Olson</i> , No. C9-92-830, 1993 WL 3866 (Minn. Ct. App. Jan. 12, 1993).....	4, 6
<i>Potter v. Hartzell Propeller, Inc.</i> , 189 N.W.2d 499 (Minn. 1971).....	12
<i>Riley v. Riley</i> , 385 N.W.2d 883 (Minn. Ct. App. 1986).....	7, 8, 9, 11

*Tarlan v. Sorensen*, No. C1-00-982, 2001 WL 185098 (Minn. Ct. App. Feb. 27, 2001).....9

**Statutes**

Minn. Stat. § 334.01.....10  
Minn. Stat. § 480A.08(3).....4, 9, 10  
Minn. Stat. § 518.64, subd. 2.....6  
Minn. Stat. § 518A.38, subd. 3.....5  
Minn. Stat. § 549.09.....10  
Minn. Stat. § 549.09, subd. 1.....7  
Minn. Stat. § 549.09, subd. 1(c).....10

## ARGUMENT

I. **THE DISCRETION VESTED IN DISTRICT COURTS TO SELECT AN EQUITABLE INTEREST RATE APPLIES IN ALL CASES “WHERE INTEREST IS DUE” AND SUCH AUTHORITY TO DO EQUITY DOES NOT TERMINATE UPON ENTRY OF JUDGMENT AS SUGGESTED BY RESPONDENT.**

In a transparent effort to avoid the clear application of *Johnson v. Johnson*, 84 N.W.2d 249 (Minn. 1957) to this case, Respondent attempts to limit *Johnson’s* holding to only cases involving pre-judgment interest by distinguishing awards of pre-judgment interest from awards of post-judgment interest, a distinction that the *Johnson* court did not make because it had no bearing on its decision just as it has no bearing on the outcome of this appeal.

Respondent asserts that *Johnson* does not control the outcome of this case, because it only applied to pre-judgment interest and not post-judgment interest: “Appellant fails to recognize that *Johnson* involved pre-judgment interest that was granted as equitable restitution to compensate for a fraud. Its interest-rate holding was based on principles of equity and restitution that apply in all cases involving fraud, not just divorce cases.” (Respondent’s Brief, p. 2). Respondent’s assertion is simply incorrect. While Respondent is correct that *Johnson* happened to involve an award of pre-judgment interest stemming from fraud, that played no role whatsoever in *Johnson’s* holding that the trial court had erred in concluding that it had no discretion to do equity and that it was bound to apply the statutory interest rate.

Respondent’s argument reflects a fundamental misunderstanding of the relevance that fraud and restitution played in *Johnson*. Fraud is what gave rise to wife’s entitlement

to interest as of a particular point in time: “[W]hen a party obtains money by his own fraud, he is chargeable with interest from the time of obtaining it.” *Johnson*, 84 N.W.2d at 255-56. Principles of restitution served as the yardstick for measuring the appropriate rate of interest: “Restitution neither justifies nor requires the imposition of a penalty on the husband but requires only that the wife be restored to the position she would have enjoyed under the original decree if a truthful disclosure had then been made of the value of the husband’s estate.” *Id.* at 256. Neither fraud nor restitution, however, played any role whatsoever in determining the issue which *Johnson* decided: whether or not the district court had the discretion to not apply the interest rate set by statute and to instead set an equitable interest rate. *Johnson* answered that question clearly by holding that district courts are “vested with a broad discretion which reasonably embraces the fixing of an equitable interest rate.” *Id.* This discretion exists not just in pre-judgment interest cases but in all cases “where interest is due.” As a court of equity, the discretion afforded district courts to select an equitable interest rate “is not controlled by statutory or legal interest rates.” *Id.*

At issue in this appeal is not Respondent’s entitlement to interest as of a particular point in time nor the rate of interest to be applied; the only issue in this appeal is the question of discretion. Did the district court error when it concluded that it had no discretion to do equity and that it was bound to use the statutory interest rate? *Johnson* clearly establishes that the district court erred when it concluded that it had no discretion to do equity.

Respondent's argument that it was fraud and restitution which gave rise to the court's authority to do equity in *Johnson* completely ignores the role of family courts as courts of equity and the inherent authority vested in family courts to do equity. The mandate of a district court to do equity is clear and unmistakable and does not terminate upon entry of a judgment and decree, as Respondent's argument would suggest. "Family dissolution remedies, including remedies in child support decisions, rely on the district court's inherent equitable powers." *Holmberg v. Holmberg*, 588 N.W.2d 720, 724 (Minn. 1999). "The district court therefore has inherent power to grant equitable relief 'as the facts in each particular case and the ends of justice may require.'" *DeLa Rosa v. DeLa Rosa*, 309 N.W.2d 755, 758 (Minn. 1981) (quoting *Johnston v. Johnston*, 158 N.W.2d 249, 254 (Minn. 1968)). "Trial courts have the power to invoke equity in the interest of reaching a just result." *Nelson v. Nelson*, 400 N.W.2d 763, 765 (Minn. Ct. App. 1987), *rev. denied* (Minn. Apr. 23, 1987). "Notwithstanding the common law's somewhat cynical reference to the length of the chancellor's foot, equity denotes fairness and requires the application of the dictates of conscience or the principles of natural justice to the settlement of controversies." *Nardini v. Nardini*, 414 N.W.2d 184, 188 (Minn. 1987) (footnote omitted). Minnesota case law is replete with examples of family courts exercising their equitable authority to fashion an appropriate remedy, both at the time of the dissolution judgment and afterward.

*DeLa Rosa v. DeLa Rosa*, 309 N.W.2d 755 (Minn. 1981), is a classic example of how family courts function as courts of equity to prevent injustice. In *DeLa Rosa*, the Supreme Court held that the district court had the equitable authority to require husband

to make payments to wife in order to compensate her for the financial support wife provided to husband during the marriage while he was attending medical school. Even though wife was not entitled to spousal maintenance under the maintenance statute because she was self-supporting, it was inequitable to leave wife without any remedy.

*DeLa Rosa* is not an anomaly. In *Nelson v. Nelson*, 400 N.W.2d 763, 765 (Minn. Ct. App. 1987), *rev. denied* (Minn. Apr. 23, 1987), the Court of Appeals faced a similar situation and affirmed the district court's financial award to wife for the support she provided to husband while he was attending law school and starting a solo practice based upon the district court's discretion to do equity.

In *Olson v. Olson*, No. C9-92-830, 1993 WL 3866 (Minn. Ct. App. Jan. 12, 1993), after husband failed to pay wife spousal maintenance, wife withdrew funds from an IRA and incurred taxes and penalties for which she sought reimbursement from husband along with the maintenance arrearages.<sup>1</sup> *Id.* at \*2. The district court granted wife's motion and required husband to reimburse wife for the taxes and penalties. Husband appealed, arguing that ordering reimbursement was error because the district court lacked the authority to do so. The Court of Appeals disagreed, holding that "[t]he district court has inherent power to grant equitable relief in marital dissolution actions 'as the facts in each particular case and the ends of justice may require.'" *Id.* at \*3 (*quoting Johnston v. Johnston*, 158 N.W.2d 249, 254 (Minn. 1968)).

---

<sup>1</sup> In accordance with Minn. Stat. § 480A.08(3), a copy of this opinion is provided herewith. (APP. 182).

In *LaFreniere-Nietz v. Nietz*, 547 N.W.2d 895 (Minn. Ct. App. 1996), the district court exercised its discretion as a court of equity to restrict wife, the judgment creditor, from taking further actions to garnish husband's wages to collect spousal maintenance and child support arrears. The district court reasoned: "While the Court recognizes that Petitioner may have the right under the law to take a high percentage of Respondent's income to pay arrears, the Court must also consider the overall impact on this family." *Id.* at 897. Wife argued that the district court's "equitable powers do not extend to this case, because '[g]arnishment is essentially a statutory remedy.'" *Id.* at 898. The Court of Appeals disagreed and cited the following excerpt from its decision in *Karypis v. Karypis*:

A trial court does not lose authority to do equity in family law unless there is a pure question of law. A district court has equitable jurisdiction in dissolution actions, and "relief may be awarded as the facts in each particular case and the ends of justice may require."

*Karypis v. Karypis*, 458 N.W.2d 129, 131 (Minn. Ct. App. 1990), *rev. denied* (Minn. Sept. 14, 1990).<sup>2</sup>

Thus, even though the garnishment statute entitled wife to further garnish husband's wages, the district court still retained the discretion to do equity by limiting wife's garnishment efforts.

In *Karypis*, wife sought a judgment against husband for unpaid child support arrears. *Id.* at 130. The district court held that wife was not entitled to arrears during the period of time that the children were living with husband even though husband had failed to seek and obtain a modification of support. *Id.* The modification statute expressly

---

<sup>2</sup> Much of *Karypis* was later codified in Minn. Stat. § 518.57, which has since been renumbered as Minn. Stat. § 518A.38, subd. 3.

prohibited retroactive modifications of support to periods before service of the notice of motion:

A modification of support \*\*\* may be made retroactive only with respect to any period during which the petitioning party has pending a motion for modification *but only from the date of service of notice of the motion on the responding party.*

*Id.* at 131 (*quoting* Minn. Stat. § 518.64, subd. 2 (1988) (emphasis added)).

Despite the express language of the statute, the Court of Appeals affirmed the remedy fashioned by the district court as “a practical way to prevent inequity.” *Id.* at 131.

These cases show that district courts in dissolution proceedings function as courts of equity both at the time of the dissolution judgment (*DeLa Rosa* and *Nelson*) and afterward (*LaFreniere-Nietz*, *Karypis*, and *Olson*). These cases also show that the authority to do equity is not dependent upon a showing of fraud--such authority stems from the inherent authority possessed by family courts as courts of equity. Nothing in *Johnson* suggests that the distinction Respondent seeks to draw between pre-judgment interest and post-judgment interest made an ounce of difference to its decision. Narrowly construing *Johnson*'s holding to only allowing family courts to select an equitable interest rate in cases involving pre-judgment interest for fraud is incorrect and in conflict with the rich history of family courts functioning as courts of equity both at the time of entry of judgment and afterward. This case must be remanded so that the trial court can exercise its discretion to select an equitable rate of interest in accordance with *Johnson*.

**II. THE POST-JUDGMENT INTEREST CASES CITED BY RESPONDENT ARE NOT DISPOSITIVE OF THIS APPEAL BECAUSE THEY DO NOT ADDRESS WHETHER THE DISTRICT COURT HAS DISCRETION TO SET AN EQUITABLE INTEREST RATE.**

Respondent asserts that *Riley v. Riley*, 385 N.W.2d 883 (Minn. Ct. App. 1986), *Merickel v. Merickel*, 401 N.W.2d 90 (Minn. Ct. App. 1987), *Bickle v. Bickle*, 265 N.W. 276 (Minn. 1936), and *Fernandez v. Fernandez*, 373 N.W.2d 636 (Minn. Ct. App. 1985) are dispositive of this appeal. Although those cases involve interest on judgments, they have little relevance because none of those cases address the issue which is the subject of this appeal--whether district courts in family law cases have discretion to set an equitable interest rate where interest is due.

In *Riley*, husband was ordered to pay wife \$30,000 as part of the property award within thirty days of entry of the dissolution judgment and decree. 385 N.W.2d at 888. Husband failed to make payment for over a year and wife sought interest for the delayed payment, which the district court denied. *Id.* Wife appealed and husband argued that wife was not entitled to interest because the property award was simply a division of property and not a judgment “for the recovery of money” within the meaning of Minn. Stat. § 549.09, subd. 1 (1984). *Id.* The Court of Appeals held that property awards in dissolution cases fell within the purview of the statute. *Id.* Thus, the issue decided by *Riley* was not whether the district court had discretion to select an equitable interest rate instead of the interest rate provided for by statute but whether the statute had any application at all to awards of property made in dissolution proceedings. *Johnson* held that the district court has discretion to set an equitable interest rate “where interest is

due.” The issue decided in *Riley*--whether interest was “due”-- had nothing to do with whether the district court had discretion. *Riley* does not mention *Johnson* and nothing in *Riley* suggests that husband ever argued that the statutory rate was inequitable or that the district court’s denial of interest to wife was based upon its discretion to do equity. Because *Riley* in no way involved the question of discretion which is the subject of this appeal, it certainly is not dispositive.

One year later, *Merickel* simply followed *Riley* and is equally unhelpful in addressing the question of discretion.

Just as *Riley* addressed in 1986 whether the judgment interest statute had any application at all to awards of property made in dissolution proceedings, *Bickle* addressed in 1936 whether the judgment interest statute had any application at all to judgments for alimony: “Under statutes allowing interest on a money judgment, such as we have in this state, interest is allowed on a judgment for alimony.” *Bickle*, 265 N.W. at 277. Just like *Riley*, the relevance of *Bickle* is limited, because it did not in any way address whether or not district courts have discretion to set interest at an equitable rate of interest, but simply whether a judgment for alimony accrued interest at all.

In *Fernandez*, the district court awarded the parties’ homestead to husband subject to a lien in wife’s favor in the amount of \$29,900 which was subject to interest at the rate of 14 percent. 373 N.W.2d at 638. Husband argued on appeal that the rate of interest was usurious. *Id.* The Court of Appeals cited the statutory rate of 9 percent and held that the district court erred in setting interest at 14 percent. *Id.* *Fernandez* makes no mention of *Johnson* and there is no indication that the district court made findings explaining why it

set interest at 14 percent or that the district court was attempting to invoke its discretion under *Johnson* to select an equitable interest rate. Although *Fernandez* provides more support than *Riley*, *Merickel*, and *Bickle* for Respondent's argument that district courts are bound to apply the judgment interest rate statute, it too is not relevant because the question of discretion was never squarely raised and addressed.

However, in a similar case, *Tarlan v. Sorensen*, No. C1-00-982, 2001 WL 185098 (Minn. Ct. App. Feb. 27, 2001),<sup>3</sup> which was decided after *Fernandez* and which did address *Johnson*, the Court of Appeals confirmed that a district court could exercise its equitable authority to set an interest rate in excess of the statutory interest rate:

We reject appellant's claim that the interest rate she is required to pay on respondent's share of the home is in error because it exceeds the judgment interest rate. The district court has discretion to set the interest rate on a dissolution judgment. *Cf. Johnson v. Johnson*, 250 Minn. 282, 292, 84 N.W.2d 249, 256 (1957) (trial court is "vested with a broad discretion" in fixing interest rates).

*Id.* at \*4.

The fact that *Riley*, *Merickel*, and *Fernandez* do not mention *Johnson* at all shows that the question of whether the district court had discretion to select an equitable interest rate was not at issue in those cases and makes those cases irrelevant in deciding this appeal. No case to consider *Johnson* has interpreted it in the narrow way that Respondent suggests. The two interest rate cases which have considered *Johnson*, *Tarlan v. Sorensen* and *Haefele v. Haefele*, No. C9-02-1818, 2003 WL 21524868 (Minn. Ct. App. July 8,

---

<sup>3</sup> In accordance with Minn. Stat. § 480A.08(3), a copy of this opinion is provided herewith. (APP. 186).

2003)<sup>4</sup> have concluded that district courts can exercise their discretion under *Johnson* to set an equitable interest rate and are not compelled to use the rates prescribed by statute. Thus, the district court erred when it concluded that it had no discretion whatsoever to select an equitable interest rate.

### **III. THE POST-JUDGMENT INTEREST STATUTE AND ITS HISTORY IS NOT DISPOSITIVE OF THIS APPEAL.**

Respondent's argument that the plain language of Minn. Stat. § 549.09 is dispositive of the issue totally ignores the unambiguous language from *Johnson* which holds that the discretion afforded to district courts to set an equitable rate of interest where interest is due "is not controlled by statutory or legal interest rates." 84 N.W.2d at 256; (Resp. Brief, p. 10). The use of the word "shall" in Minn. Stat. § 549.09, subd. 1(c) ("...the interest rate *shall* be ten percent per year") is no more binding on the district court in this case than the use of the word "shall" in Minn. Stat. § 334.01 ("interest for any legal indebtedness *shall* be at the rate of \$6 upon \$100 for a year") was binding on the district court in *Johnson*.

Respondent's argument that "[a]s to pre-judgment interest, the statute permits trial courts to depart from the statutory rate when 'otherwise provided by contract or allowed by law,' but grants no such permission as to post-judgment interest" would only be compelling if the statute itself was the exclusive source of authority in *Johnson* to select an equitable interest rate. (Resp. Brief, p. 10). However, it clearly was not because, as

---

<sup>4</sup> In accordance with Minn. Stat. § 480A.08(3), a copy of this opinion is provided herewith. (APP. 172).

detailed above, such authority originated from the district court's role as a court of equity in a family law proceeding.

Respondent also is wrong regarding the purpose of interest. Because Respondent knows that she cannot possibly defend the 10 percent rate as an equitable result in this case, she argues that post-judgment interest is supposed to operate as a penalty. (Resp. Brief, p. 11, 12). Respondent cites a legal encyclopedia and a case from New York for the proposition that "Post-judgment interest is awarded as a penalty for a delayed payment on the judgment." (Resp. Brief, p. 11). The cases from Minnesota Respondent cites in her own brief show that post-judgment interest in family law cases is not awarded as a penalty but to compensate the recipient for the loss of their money over time. *See Bickle v. Bickle*, 265 N.W. 276, 277 (Minn. 1936) ("To withhold the use of the money for the period of a year or more and then to deprive the prevailing party of interest on the judgment would be to lessen the amount of the award.") and *Riley v. Riley*, 385 N.W.2d 883 (Minn. Ct. App. 1986) (noting that "[f]or more than a year, respondent deprived appellant of the \$30,000 awarded to her by the trial court in the judgment").

These family law cases are consistent with other Minnesota cases that confirm that post-judgment interest serves as compensation for the loss of use of money and not as a penalty. The Minnesota Supreme Court has stated that "post-judgment interest... is compensation for the loss of use of money as a result of the nonpayment of a liquidated sum." *Lienhard v. State*, 431 N.W.2d 861, 865 (Minn. 1988) (citing *McCormack v. Hanksraft Co., Inc.*, 161 N.W.2d 523, 524 (Minn. 1968)). "We have repeatedly recognized that interest is not a penalty, but rather is the payment of a reasonable sum for

the loss of use of money.” *In re Defenses and Objections to Personal Property Taxes for 1969 Assessment*, 226 N.W.2d 296, 299 (Minn. 1975) (citing *McCormack and Potter v. Hartzell Propeller, Inc.*, 189 N.W.2d 499 (Minn. 1971)).

The legislative history regarding the 10 percent rate does not support the result in this case because the inequity produced by application of the 10 percent interest rate was clearly something never intended. At the hearing on April 2, 2009 before the House Public Safety Finance Division Committee on H.F. 1611, which Respondent references in her brief (Resp. Brief, p. 12), a witness testifying in favor of the 10 percent rate explained that a reason for the rate was to prevent judgment debtors from intentionally delaying payment on a judgment in order to beat the judgment interest rate by earning a greater return on their money in the marketplace:

Anecdotally, I can tell you that we have practitioners that practice both in Minnesota and in Wisconsin, and routinely they believe that appeals are taken on Minnesota judgments simply because we have a lower interest rate, and that those appeals do cost money, and they take time, and it is not inconceivable that you can buy down the value of what you owe by making more money in the market than what you owe in interest to the judgment creditor.

Hearing Recording at 57:25-57:59<sup>5</sup>

It is the epitome of irony that in this case the exact opposite result has occurred through imposition of the 10 percent rate. Respondent has achieved a windfall in interest that she never could have conceivably earned in the marketplace by obtaining judgments against Appellant at the 10 percent rate. Respondent makes no allegation, nor could she,

---

<sup>5</sup> The audio recording of the August 2, 2009 hearing on HF 1611 is accessible through the following website:

<<http://www.house.leg.state.mn.us/comm/minutes1.asp?comm=86122&id=2019>>.

that Appellant has purposefully delayed payment to her in order to beat the market. To the contrary, interest at the 10 percent rate has operated as an unwarranted penalty against Appellant and an undeserved windfall to Respondent that does not comport with equity.

It is not surprising that the application of the 10 percent rate in this case produces a result so at odds with the statute's legislative history. Nothing in the committee hearing suggests that the Legislature was aware of *Johnson* and sought to overturn it or that the Legislature was thinking about application of the 10 percent rate to family law cases. The Committee heard from a representative from the Minnesota Association for Justice (formerly the Minnesota Trial Lawyers Association) who spoke in favor of the 10 percent rate and heard from a representative of the Insurance Federation of Minnesota who testified in opposition. It was in this civil, non-family law context, that the rate was considered. Nothing in the legislative history suggests that district courts in family law cases should not retain discretion under *Johnson* to do equity. This case must be remanded so that the district court can exercise its discretion.

### CONCLUSION

The narrow construction of *Johnson*'s holding proffered by Respondent stems from her misunderstanding of the role that fraud and restitution played in that decision. The district court had discretion in *Johnson* to select an equitable interest rate because it was a court of equity, not because it was a case involving fraud. Subsequent cases which have considered *Johnson* confirm that district courts have discretion to select an equitable interest rate. Furthermore, not one of the cases cited by Respondent addresses the fundamental question, which is the sole issue to be decided in this appeal, whether the

district court in a family law proceeding has discretion to select an equitable interest rate. Nothing in the language of the judgment interest statute itself, its legislative history, or our case law supports Respondent's theory that the discretion afforded family courts to do equity is extinguished upon entry of the dissolution judgment.

Respectfully submitted,

Dated: August 22, 2011

HENSON & EFRON, P.A.

By   
\_\_\_\_\_  
Alan C. Eidsness, 26189  
Suzanne M. Remington, 244752  
Jaime Driggs, 338606  
Attorneys for Appellant/Husband  
220 South Sixth Street, Suite 1800  
Minneapolis, MN 55402-4503  
Telephone: (612) 339-2500

429227.DOC